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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 LEOPOLDO CARDENAS,

12 Petitioner,

13 v.

14 PAT GLEBE,

15 Respondent.
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Case No. C08-5774RBL

REPORT AND
RECOMMENDATION TO DENY
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS

Noted for February 20, 2009

17 This case has been referred to Magistrate Judge J. Kelley Arnold pursuant to 28 U.S.C. §
18 636(b)(1) and Local MJR 3 and 4. Petitioner in this case is an inmate at the Airway Heights Corrections
19 Center. Petitioner has filed an application to proceed *in forma pauperis*, (Dkt. # 1), but he has since paid
20 the \$5.00 filing fee (Dkt. # 3). Accordingly, the Court should deny the application.

21 DISCUSSION

22 The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a
23 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in
24 denying an application to proceed in forma pauperis. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963),
25 *cert. denied*, 375 U.S. 845 (1963).

26 Several district courts have ruled that denial of *in forma pauperis* status is not unreasonable when
27 a prisoner is able to pay the initial expenses required to commence a lawsuit. *See* Temple v. Ellerthorpe,
28 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595 (S.D.Tex. 1977); U.S. ex rel. Irons v.

1 Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku v. Britton, 357 F.Supp. 825 (D.Kan. 1973),
2 *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner, 61 F.R.D. 639 (M.D.Pa. 1974).

3 By requesting the court to proceed *in forma pauperis* in the present case, petitioner is asking the
4 government to incur the filing fee because he is allegedly unable to afford the costs necessary to proceed
5 with his petition for habeas corpus. Given the minimal fees required to proceed with this action (\$5.00
6 filing fee) and the fact petitioner has paid the fee, it is not unreasonable to deny petitioner's application for
7 *in forma pauperis* status.

8 CONCLUSION

9 Because petitioner has already paid the required filing fee, the undersigned recommends that the
10 Court deny his application for *in forma pauperis* status. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)
11 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to
12 file written objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
13 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
14 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **February 20, 2009**, as
15 noted in the caption.

16 DATED this 28th day of January, 2009.

17 /s/ J. Kelley Arnold
18 J. Kelley Arnold
19 United States Magistrate Judge
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